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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/929,836	09/15/1997	RUSSELL DONOVAN ARTERBURN	6971	2308
7590 11/12/2003 ROBERT D. TOUSLEE JOHNS MANVILLE CORPORATION 10100 WEST UTE AVENUE LITTLETON, CO 80127			EXAMINER HOFFMANN, JOHN M	
			ART UNIT 1731	PAPER NUMBER

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

08/929,836

Applicant(s)

ARTERBURN, RUSSELL
DONOVAN

Examiner

John Hoffmann

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

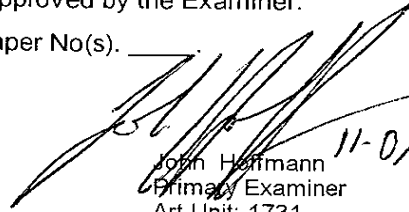
Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


John Hoffmann
Primary Examiner
Art Unit: 1731

11-07-03

Continuation of 2. NOTE: The new issues include whether the amendment was proper - for not being separate from the remarks, and whether the changes to claim 8, line 5; claim 11, line 7; claim 21, line 12; claims 5-6 and 22, line 1 make the claims indefinite. Also, since there are terms which lack antecedent basis, it would be a new issue as to whether all of the various claim terms that the Board refer to, are in fact corrected.

Continuation of 5. does NOT place the application in condition for allowance because: the arguments are not persuasive As to the argument that Examiner added new rejections. Examiner did not make any new reasons for a rejection: The Board was clear as to reason for the rejections. Since Applicant submitted a full response to the Rejection that was made by the Board of Appeals, it is deemed that Applicant fully understood the rejection. As indicated on page 14 of the Board decision, "appellant should thoroughly review all claims to ensure that all indefinite problems are corrected." It is the Office's position that Applicant did in fact thoroughly review all the claims and concluded that all indefinite problems are corrected and that the Board was incorrect. Therefore the issues are ripe for appeal.

As to the Argument that the rejections were presented for the first time by the Examiner based on Examiner's interpretation of the new grounds. The final rejection is based entirely on the interpretation set forth by the Board. Applicant has not pointed out any what was supposedly interpreted differently.

As to part (c) on page 6 of the response: Examiner takes exception to most of what is written. The only attempt to schedule an interview was made by John Miller, not Robert Touslee. In or around April, Examiner left at least two messages for John Miller - the messages were never returned. As Examiner recalls, the individual neglected to mention that there was a rejection added by the Board. Also, Examiner did not have access to the Office's copy of the papers at the time of the first voice mail messages: this was the only reason Examiner ever gave as to why he would not have an interview, i.e. it is impossible to discuss a case when one does not have access to it.

As to the standard for lack of antecedent basis: the standard was first used by the Board, not by Examiner. Examiner took pains to point out all terms lacked antecedent basis - so as to aid the Applicant. Examiner made no indication that all of them made the claims indefinite. As indicated by Applicant, just because a term lacks antecedent basis it doesn't mean the claim is indefinite. The most efficient way to make sure that lack of antecedent basis doesn't make the claim indefinite - is to make sure no term lacks antecedent basis. Therefore, examiner listed all possible candidates.

As to the argument that the lack of antecedent basis should only be used in aggravated situations. Since the Board made the rejection, it is clear that the situation is aggravated by the present language. It is far easier to simply provide antecedent basis for every term in every claim, so as to not have to consider whether any given lack makes a claim indefinite. The record would be cloudy if Examiner were to indicate that claims were definite while the Board states they are indefinite.

As to the meaning of "channel positions" - It is noted that the bottom of page 8 of the response, Applicant points to "the first positions in each of the legs, the positions next to the channel, are called channel positions." It is deemed that this is what Applicant holds to be the meaning. This is not persuasive, at least because it is not commensurate with claim 21 which refers to "at least one bushing leg in a channel position". A first position in a leg cannot be a channel position, because the bushing leg is in the channel position.

It is argued that the Board did not consider the terms "mid or central portion" and "end portions" to be of indefinite meaning. The Board stated "the meanings of various terms used are not readily apparent from the prior art or from the specification and drawings." These "portion" terms are the "various" terms that the Board was referring to because all of the other terms in the claims have meanings which are readily apparent. These are the only other possible terms. Since Applicant has never pointed out any other terms would be considered to be the Board's "various terms" it is deemed that Applicant agrees that these are the "various terms".

The arguments regarding 5935291 are not understood as to how they are relevant. As Applicant states - it is not prior art - thus one cannot rely on it to demonstrate what a central portion is.

As to the argument that the end is not a specific portion: First, examiner never stated, or alluded to anything which suggest that a "specific portion" means a specific size and/or location. Second, since the Board (p. 11) has determined that an "end portion" cannot be an arbitrary portion that occurs at an end, it therefore stands to reason that it must be a specific portion.

As to the mid or central portion: it is argued that it is the portion which has the mid point of the screen. Examiner could not find anything in the specification to support the conclusion that this is the definition. Of course, the term might reasonably encompass some regions which include the mid-point - but the claims are not so limited to such. For example, something that occurs in mid-winter or in the central part of America, it does not follow that it must encompass any midpoint.

As to the request for an interview: It is granted. As to the request for Examiner to schedule the interview: Applicant can propose one or more days or times to have the interview, then Examiner will inform applicant as to whether that time is possible. ~~XXXX~~

Continuation of 10. Other: Those proposed amendments which are not referred to in section 2 as creating new issues, would be entered if filed in a separate amendment..